

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON EDUCATION AND CULTURAL RESOURCES

Call to Order: By **CHAIRMAN BILL GLASER**, on March 21, 2003 at
3:00 P.M., in Room 317-C Capitol.

ROLL CALL

Members Present:

Sen. Bill Glaser, Chairman (R)
Sen. Bob Story Jr., Vice Chairman (R)
Sen. Jerry W. Black (R)
Sen. Edward Butcher (R)
Sen. Mike Cooney (D)
Sen. Jim Elliott (D)
Sen. Royal Johnson (R)
Sen. Jeff Mangan (D)
Sen. Don Ryan (D)
Sen. Tom Zook (R)

Members Excused: None.

Members Absent: None.

Staff Present: Tari Elam, Committee Secretary
Connie Erickson, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 302, 3/06/2003, 3/12/2003
Executive Action:

[PLEASE NOTE: MINUTES FOR THIS MEETING DO NOT REPRESENT A FORMAL PUBLIC HEARING ON HB 302; THE HEARING FOR HB 302 OCCURRED ON MARCH 12, 2003. THIS MEETING WAS CALLED SOLELY FOR THE PURPOSE OF INFORMING COMMITTEE MEMBERS ON CERTAIN ISSUES, AND TO ENCOURAGE A CONTINUING DIALOGUE.]

**Discussion with Greg Petesch, Director & Code Commissioner,
Legislative Services Division:**

{Tape: 1; Side: A; Approx. Time Counter: 0.2 - 28.5}

CHAIRMAN BILL GLASER stated a representative of the Legislative Services Division, **Greg Petesch**, was present to address certain concerns with the bill and to respond to any questions Committee might have. **CHAIRMAN GLASER** also noted the presence of **REPRESENTATIVE NANCY RICE FRITZ** and requested authorization for **REP. FRITZ** to pose questions to **Mr. Petesch** as well; without objection.

CHAIRMAN GLASER requested **Mr. Petesch** provide an overview of the questions his office has received regarding the bill, together with respective answers.

Greg Petesch, Director & Code Commissioner, Legislative Services Division, stated he was presented with a question regarding whether the bill's mandatory participation violates the local control provision for local school districts as contained in the Montana Constitution. He stated there is very little information in either the Constitutional Convention transcripts or case law which defines "local control." In 1976, the Montana Supreme Court decided School District #12 v. Hughes & Colburg, wherein the Court reviewed the issue of local control. Although not dealing specifically with insurance, **Mr. Petesch** indicated the analysis may prove helpful. He explained the Court was convinced the delegates intended no expansion of authority for school districts; i.e., they were attempting to preserve the same levels of authority as existed at the time the delegation met. He applied that standard to the only current statute which addresses insurance for schools: **20-3-331 (MCA)**. That statute says Boards of Trustees may provide disability insurance for employees; in 1971, disability insurance was health insurance. He stated the question then becomes: is requiring school districts to participate in a state-wide health insurance pool such an erosion of the authority they held at the time of adoption of the constitution when it was permissible for them to provide that insurance as to be an erosion of local control to the magnitude that the court would strike down the law.

Mr. Petesch stated the answer is difficult. Clearly, there is a minimal erosion of local control. The majority of districts provide health insurance, the provision of health insurance is a benefit, and the provision of health insurance is normally considered a "public good;" these factors would probably weigh in favor of allowing for the plan. However, whatever methodology is

used to deliver the insurance will, in all likelihood, be closely scrutinized by the Court.

Mr. Petesch reiterated, under the analysis of *Hughes & Cohlberg*, there is a slight erosion of local control because currently districts do not have to provide insurance; nor were they required to provide insurance in 1971. Whether the Court would determine the erosion is of such a magnitude, when measured against the "public good," that it should be found unconstitutional, he is uncertain. He stated the only other guidance the Court has provided since 1976 is that "level of funding cannot be equated to local control."

SENATOR DON RYAN, referring to **Mr. Petesch's** statements regarding the provision of insurance as being in the "public good," and noting many districts do offer insurance, asked if mandating participation to those districts removes a contract right from their purview. **Mr. Petesch** replied he believes the Court will look at "how" the insurance is provided and at what level to determine whether an erosion of local control has occurred. Districts currently providing insurance are doing so under permissive authority of the statute; the statute does not determine benefit levels or other aspects of coverage. He explained once a district decides to offer health insurance, later options are limited because the insurance codes indicate certain coverage must be offered. Telling districts they must offer coverage through a certain mechanism, in a particular manner, is a slight erosion of their authority. **SEN. RYAN** asked whether the bill should mandate for any school not presently offering insurance, but who later decides to do so, they must join the state-wide plan. **Mr. Petesch** replied his understanding of the bill is that it requires all districts to join. **SEN. RYAN** stated the bill is limited to districts currently offering health insurance. **Mr. Petesch**, noting **SEN. RYAN's** statement, explained it is permissible to require participation once a district decides to offer the benefit. The original decision is left to the district.

SENATOR JEFF MANGAN asked if the Court evaluates "public good" on a local (district) level or state-wide level. **Mr. Petesch** replied, if challenged by a single district, the district would argue the requirement is not in the interest of district and the state would argue it is general public good.

SENATOR BOB STORY, referring to **Mr. Petesch's** statement regarding revision of **20-3-331**, asked how that particular part of the code needs revising. **Mr. Petesch** stated **20-3-331** provides that a district may offer insurance or self-insure. His understanding of this bill's requirements would necessarily negate the ability

to self-insure; thus, he believes there is a conflict between the two. Whether any district would be allowed to opt-out, no. **SEN. STORY** rephrased his question, asking if it is possible for a school district who either does offer insurance, or decides in the future to do so, to at some point decide not to offer insurance. **Mr. Petesch** replied, under the current statute a district may do so because it is permissive in application.

SENATOR JIM ELLIOTT inquired if a school district is mandated to offer a plan with less coverage than they presently offer, does that present any constitutional issues. **Mr. Petesch** replied the only issue he sees is a possibly "impairment of the right to contract." He noted this legislation cannot be applied to any contracts already in existence because the state and federal constitutions will not allow that. Therefore, application must wait until the expiration of an existing contract. The insurance code regularly add required benefits.

SENATOR EDWARD BUTCHER sought clarification on whether a district may offer benefits in excess of the state's plan without creating a conflict. **Mr. Petesch** replied additional benefits are permissible.

REP. FRITZ, referring to a previous conversation with **Mr. Petesch** in which she posed many of the same questions being presented today, stated she remembered him saying a state cannot infringe upon local control in clearly established areas such as salary and conditions of work, but insurance is not one of those areas. **Mr. Petesch** replied **REP. FRITZ** was correct in her assertion, noting he used the example of adding mandatory requirements for group policies presently in existence. **REP. FRITZ** stated the original reason behind her question was her perception that benefits are a part of salary. She provided an example of how collective bargaining occurs; emphasizing insurance is a benefit which is considered a part of salary. She also noted schools have the right and duty to bargain salaries. **Mr. Petesch** agreed schools clearly have the right to bargain salaries, however, he could not agree with **REP. FRITZ's** analogy because certain schools do not offer insurance, but they clearly pay salaries. Insurance benefits are not a statutorily required portion of salary, therefore, he believes insurance is a benefit that can be collectively bargained under current law.

SENATOR TOM ZOOK, noting school districts can bargain salaries, inquired whether it is also correct that the state may set a state-wide salary. **Mr. Petesch** stated the question is an interesting one because it goes to the heart of local control. If the state were to fund state-wide salaries, then a district may choose to go above the directive. However, were the state to

mandate a payment level of salary a district must comply with then an unfunded mandate in violation of local control would exist. **SEN. ZOOK** rephrased his question, asking if it is constitutionally permissible for the state to set beginning teacher salaries. **Mr. Petesch** replied only if the state provides funding. **SEN. ZOOK** asked when there is a shortfall in the school equalization account which must be backfilled with general fund money is it not the case the stated is providing funding. **Mr. Petesch** explained all on-going expenses of the district must be evaluated in the analysis, and that issue is at the center of the debate for all school funding litigation. He stated, the question is: is the state funding its' "share" of the basic system. He noted the most recent decision by the Supreme Court said "at a minimum, the state's share are the accreditation standards established by the Board of Public Education." If the state is funding at that level, then the state is meeting its' minimum obligation. Were the state to require a minimum salary, and the accreditation standards established the number of teacher necessary, then the state would be obligated to pay that amount of money.

SEN. BUTCHER reiterated his previous question regarding additional benefits. **Mr. Petesch** stated he did not see any conflict with offering additional benefits.

SEN. ZOOK stated his understanding of **Mr. Petesch's** assertions regarding salaries is the state could not set a state-wide schedule for beginning teachers unless it could be proven the money being contributed by the state goes toward payment of those salaries. **Mr. Petesch** replied in the affirmative.

REP. FRITZ, alluding to **Mr. Petesch's** testimony on salaries, asked if a district were to offer insurance but eventually could no longer afford to do so, would the state be obligated to pay the premiums. **Mr. Petesch** replied if the state is requiring districts to enter into a program, then there is an obligation to at least provide a mechanism for paying the requirement. He explain this is not a constitutional issue, but is an obligation arising from statute.

Discussion:

CHAIRMAN GLASER expressed appreciation to **Mr. Petesch** for his time. He also indicated a request had been submitted to **Mr. Standaert** to determine which districts are paying for insurance and how much they are paying.

SEN. ZOOK stated his understanding of **Mr. Petesch's** final comments were that if the state required schools to join this

plan it could be seen as an unfunded mandate unless the state provides the money.

CHAIRMAN GLASER noted there were two other alternatives being discussed: the two-tier system, and the regional, state-wide system.

SEN. JOHNSON conveyed his understanding regarding payment of premiums is that it will become a part of the local bargaining process between districts and employees. He inquired whether his understanding was correct.

CHAIRMAN GLASER replied in the affirmative.

{Tape: 1; Side: B; Approx. Time Counter: 1.6 - 11.3}

REP. FRITZ stated her concerns regarding misunderstandings associated with collective bargaining. She explained the underlying issues and processes which occur.

SEN. BUTCHER, expressing concerns over the number of employees not covered under any insurance plan, asked whether implementation of basic plan which allowed for additional benefits would satisfy the bargaining issue. **REP. FRITZ** replied in the negative, and explained the various aspects of the bargaining process. She also stated, while the idea may be admirable, it will create a mandate.

SEN. BUTCHER stated, although he realizes some schools have been successful, a year where ten members are diagnosed with cancer will quickly destroy that success. He reiterated that bargaining generally occurs around the fringes. He expressed concern with the plan's failure to require that at least some board members have insurance experience.

Ms. Erickson stated there are six amendments for the bill.

SEN. JOHNSON stated his main concern with the bill is its' lack of coverage for those people who are not covered by any plan at the present time; the bill only attempts to cover those who already have healthcare insurance.

SEN. MANGAN stated he supported the bill.

FOR THE REMAINDER OF THIS MEETING MS. ERICKSON EXPLAINED AMENDMENTS THAT HAD BEEN OFFERED BY VARIOUS PARTIES.

ADJOURNMENT

Adjournment: 5:30 P.M.

SEN. BILL GLASER, Chairman

TARI ELAM, Secretary

BG/TE

EXHIBIT (eds60aad)